Saskatchewan
Municipal Affairs,
Culture and
Housing

The Decision Writing Process

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Saskatchewan Municipal Affairs, Culture and Housing
Municipal and Community Services Division

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Introduction

Decision writing involves a process of interpreting the issues, facts and law presented during a hearing of the board of revision. The board must provide a written explanation for making its decisions. Decisions without explanation do not provide the parties to the appeal with any information concerning the reasons why the board made the decision it did. Every person who appears before a board, or some other administrative tribunal, must be able to know why they won or lost their appeal.

Providing reasons for decisions is a method of ensuring boards remain accountable to the people served and ensures that the hearing process remains fair for all parties.

There are numerous methods and theories about how to write decisions properly, which this document will not be able to cover. However, this manual is intended to guide a board of revision member through a suggested decision writing process.

He Who Hears Must Decide

It is a principle of natural justice that only those board of revision members that have fully heard the evidence and arguments in an appeal hearing may vote in the decision as a result of it.

The principle that "he who hears must decide" requires every board member to:

a) evaluate the relevant evidence placed before him;
b) consider the arguments of both sides;
c) direct his "mind" to the issues at hand in rendering a decision.

The persons who make the decision as a result of a hearing must be the persons who "heard" all evidence and arguments. In other words, where oral hearings are required, the board member must have taken part in the entire proceedings to vote on a decision.

Oral Hearings

Only those board members who have fully participated in an appeal hearing can make a decision relating to it. It is not sufficient for the purposes of this rule that a board member had heard some or most of the evidence or originally had been scheduled to preside at the hearing (but had not been able to attend some or all of it), or had read the transcript or report of the proceedings. A board member who has not attended the full duration of a hearing has not heard all evidence and arguments, and may not join in making a decision with respect to it.

Consequences of Breach of Rule

It is necessary for each board member to have personal knowledge of all evidence presented at the hearing in order to participate and vote on the decision. Any participation by a disqualified member in voting on a decision will, in all likelihood, invalidate the decision.

Board members may consult each other regarding a policy or application of policy or law for a particular appeal. However, unless the member has fully participated in the appeal hearing, he/she should not discuss the merits of the case.

Who Should Write the Decision?

Those board members that were present at the appeal hearing must make a decision regarding the appeal. The board cannot delegate its writing and decision making to someone else. The board must draft its own reasons personally and independently. That is, the board has no authority to delegate the formation of its decision to a person who has not been appointed as a board member, and who had not fully heard the appeal.

However, the board members may be assisted by staff in the formalization of how the decision and reasons are expressed. The staff's participation should be limited to:

a) reviewing the decision for clerical, spelling or grammatical errors or accidental omissions;
b) commenting on the framing of the reasons such as noting internal contradictions in the reasons, deleting erroneous references to the evidence or adding relevant references to the evidence;
c) advising the board as to the relevant law, and the existence of judicial and previous board decisions relevant to the matter;
d) checking correctness of legal citations;
e) checking for internal logic and consistency; and
f) summarizing the evidence.

When the staff has completed its review the decision must go back to the board to consider and approve each change or suggestion made.

When the decision is finalized, it should be signed by each board member to signify that each of them has fully participated in preparing reasons for the decision.

Providing Reasons for Decisions

A decision can be defined as what the board has determined it will do with respect to an appeal. There may be many decisions made in the course of a hearing. However, these decisions are interim decisions and they lead up to the decision on the main question.

Requests to add a party, or for an adjournment, or for the ruling on the admissibility of evidence, are examples of interim decisions which the board decides.

Reasons alone are not decisions. Decisions are "what" the board has decided to do and reasons are "why" the board decided to do it. Reasons are important because they provide the parties to the appeal with an understanding of how the board came to its decision.

Although the legislation permits boards to provide a verbal decision at the time of the hearing, it is suggested this not be a practice of the board. The board should always wait and render its decision in writing.

Providing a verbal decision at the time of the hearing may not permit the board sufficient time in which to fully consider the evidence and arguments of the appeal. As well, board members may not have had the full opportunity to review the law or precedence surrounding the appeal. Given that the board should be consistent in the application of the law, precedence and their own policies, it is important that the board fully review all the elements of an appeal to render a good decision.

From a legal perspective, boards are required to provide written reasons for its decisions. Failure to do so could result in the decision being set aside by the Assessment Appeals Committee (AAC).

Providing reasons for decisions is an accepted practice for administrative tribunals. Reasons are required so that board decisions are accepted and respected. To be respected, the decision must be understood. Reasons provide the reader with an explanation as to why the decision was made.

Aside from informing the parties to the appeal of why the board decided the way it did, reasons serve a number of other important purposes:

1. Reasons provide for better decisions because the decisions are more likely to be well thought out.
2. The board will benefit from having its decisions reviewed by the public.
3. The public will have confidence in the decision.
4. Reasons permit the parties to assess whether they have grounds for a further appeal and to know the case to be met if there is an appeal.
5. The appellate body (AAC) will know the basis of the board decision if written reasons are provided.
6. Reasons may be used as guides or precedents for the public.
7. Reasons allow the board to express its views and give direction on how it sees its legislative authority or process working.

From the AAC's perspective, if written reasons were not provided, it would be difficult (if not impossible) for the committee to carry out is responsibilities. Failure to provide reasons limits the AAC's ability to

determine the correctness of the decision under appeal. In some instances, the Committee may conclude that the board has failed to appreciate, or even consider, relevant evidence. Given these circumstances, the Committee may rule that it has jurisdiction to hear new evidence.

When to Write Decisions

A decision should be written as soon as possible after the hearing is completed. The parties and the public are entitled to the result as soon as possible. As well, the decision may affect a policy decision of council.

It is generally easier to write the decision if it is written soon after the close of the hearing. Waiting to write the decision only increases the work of the board, as more time will be needed to become familiar with the evidence and arguments presented in the case.

Municipal legislation imposes statutory deadlines for decisions to be rendered. For urban municipal boards, the decision must be rendered by June 15. Rural municipal boards must render a decision by August 1.

Writing Decisions

Board decisions should be well-organized, concise and clear of thought and expression. A reader should know at the beginning what the board was thinking and the assumptions upon which the decision rests.

One of the first steps after the hearing is over is to meet with the other members of the board and sketch out the facts, issues, assessment manual rules, statutory considerations, any precedence, and the conclusions, with reasons for them. Writing a draft of the reasons is usually assigned to one person. It is usually best to focus on the process of getting all of the issues on paper and worry about the product in the next draft. During the early stages of decision writing, it is best to think first and organize later.

Decisions are written to be read and understood. It is useful to:

1) Stop and ask yourself, "Who is our audience?"
2) Try to think the way the reader will think rather than to write as a writer.
3) Try to persuade and win over the reader to your point of view. In doing so, try to keep to the point.

Organizing the Decision

Facts

Most decisions begin with a story, with a series of factual statements which are meant to identify who you are and what you are deciding.

It is best, when preparing the facts, to list the facts according to the appellant, according to the respondent and those facts found to be relevant by the board.

Listing the facts according to each of the parties indicates to them that the board was listening to their arguments and did make note of them. However, in some instances, the board may find that although the party presented a convincing argument, the evidence presented was not relevant to the appeal. The board must decide if it wants to include the irrelevant facts in the decision.

The decision to exclude facts because of their relevancy, is a decision that must be thoroughly weighed and measured by the board. As noted, it does give the parties the feeling that their case has been fully heard, however, listing or noting irrelevant evidence could be considered frivolous.

Issues

An attempt should be made by the board to clearly define what it is that the board must decide. Issues are questions the board is trying to answer.

Stating the issues of the appeal can be as simple as answering the question: "What must the board decide in this appeal?" The issue statement could be as simple as: "The board has been asked to decide if the improvement

located on Lot 10, Block 15, Plan No. OLD2145 has more than one fireplace and if its construction should be rated 'AA'."

The issues should be a simple statement that focuses the writer's mind (in the decision making process) and the reader's mind (in the reading process). It is not enough to state what the parties say the dispute is about, the board must make a determination as to what the issue is and state that issue.

Rules, Statutes, Precedence

This part of the decision is a statement of the rules, statutes and other cases relied upon to address the issues of the appeal. In the case of an assessment appeal, the board may state the specific assessment manual rule applied, the statutory authority (reference to municipal legislation) and any general legal principles or other cases relied upon to provide the legal basis for the board's decision.

Application/Analysis

Now that the facts, issues and rules have been stated, how do they fit together? The application/analysis should include a general discussion of the choice of principles on which the decision will be made, some examination of the evidence in the light of these principles and some comparison and weighing of alternative approaches.

This is the core of the decision. The application/analysis should be as candid as possible about how the elements of the case were combined and analyzed in reaching the decision.

The reader should be able to identify what persuaded the tribunal to come to its conclusion. If it was the acceptance or rejection of particular evidence, or a previous line of appeals decided by the board, or a consideration of board policy which was important in reaching the decision, this should be clear from the reasons.

Conclusion

The conclusion is an opportunity for the board to make clear what it has decided. This is where the board states exactly what the consequences of its conclusions are: who gets what. The conclusion should provide an answer for each issue in the appeal.

There is no better way to write a conclusion than to ask yourself the question "why?" Why was the appellant's evidence more relevant that the respondent's evidence? There must be a reason and if so what is it?

It is important to remember for whom you are writing the decision. In all cases, the decision will have the greatest impact on the loser. It is important that the decision be written keeping this in mind. The board must spell out the steps it took in making its decision. This will provide the reader with a logical progression of the board's decision, and will make it easier to understand the reasons.

Also remember that the decision becomes a public document, which shapes practice, procedures, policy and law (precedence).

Releasing the Decision

The board must send its decision to the appellant within 14 days of making it decision. All decisions of the board must be rendered before June 15 for urban municipalities and August 1 for rural municipalities. All decisions of the board are a matter of public record and may be released to the public.

Practical Matters on Writing Decisions

Decision writing can be summarized in seven words: collect, collate, select, refine, rewrite, circulate and issue.

The following are some practical tips that will assist board members in writing decisions. Although decision writing is not easy, its difficulties can be overcome by learning and practicing how to write so that the reader clearly understands the intent of the message.

Preparing for Decision Writing

Preparation for writing decisions begins when the appeal is received. Board members should review the appeal, determine the nature of the appeal and its issues. In some instances, the members may be required to review any relevant rules or statutes. A discussion with other board members shortly before the hearing may be advisable. This preparation stage is meant to be used for information gathering only. It is important to note that the board members should not form any preconceived notions about the appeal.

Identify Issues

Identify the issues at the beginning of the hearing. This may require clarification with the parties to the appeal. An opening discussion with the parties to establish the issues will aid the board in following evidence and arguments during the hearing. Having a thorough understanding of the evidence and issues is important in writing a good decision.

Taking Notes

Taking notes is a matter of personal preference where hearings are recorded. Board members can certainly rely on the recording to recall and note the important elements of the hearing. However, taking notes will help in concentrating on the hearing. Some members simply take note of important questions they may want to ask later, while others will take extensive notes of the proceedings. Whichever method is chosen depends upon personal preference.

Where the hearing is not recorded, it is essential that the members take notes. Making note of the important elements of the hearing will greatly assist in writing the decision.

Post Hearing Meeting

As soon as possible after the hearing, meet with the other board members and sketch out the facts, the issues, and the law, as well as any conclusions and the reasons for them. It is more important at this stage in the decision

writing process to get all of your ideas on paper. The structure and organization of the decision comes later.

Review Initial Draft

Review the initial draft for the purpose of adding in anything that has been missed. Review notes, written exhibits and motions for the purpose of making sure that nothing of significance has been missed. When all of the relevant material has been added, the initial process of organizing and rewriting begins. It may take several drafts to get things roughly into their proper place.

Prepare Final Draft

Once everything is in its place the process of writing the final draft begins. The objective of this stage is to ensure the decision is complete, accurate, organized, and clear in its thought and expression. Move back and forth through the reasons, thinking, rewriting, and organizing. Try to make the reasons stronger.

Outlining Reasons

When this process of rewriting has been completed, it may be useful to prepare an outline of the reasons. This will indicate whether something is out of place, if certain sections can be consolidated with other sections, or if there is any duplication or omission.

Tentative Decisions

Do not be afraid to be wrong; trust your experience, judgement, and common sense. The fear of making a wrong decision causes people to break all the rules of good writing because the purpose of writing becomes something other than communication. Avoid humor, as the proceedings are rarely humorous to the parties. Avoid timid or passive expressions such as "it seems to us" or "it would appear to be".

Offensive Parties

Throughout the decision the board should remain objective and impartial, and must be seen as objective and impartial. From time to time the board

may be faced with an offensive appellant, or they may be angry with counsel or a witness. The board cannot let their emotions get the better of them and make a retaliatory decision. They must remember the issues to be decided are the facts of the case. Any statement in the decision that appears to be retaliatory may cause the offensive party to suspect that the board has not acted objectively or impartially.

This does not mean that criticism of a party or witnesses is never warranted. There are usually other channels available, such as a meeting with the parties or a verbal reprimand. Decisions are rarely the appropriate vehicle.

Spelling, Grammar and Punctuation

Ensure the spelling is meticulous. The Oxford English Dictionary is the generally accepted legal standard among dictionaries.

Slang, colloquialisms, and trendy jargon should be avoided, as they are not appropriate. If slang or colloquialisms must be used, they should appear in quotations. Grammar and punctuation should also be meticulous.

Use Simple Language

Keep the writing simple and clear. Avoid complex, unfamiliar words. The easier the decision is to read, the easier it is for the reader to accept the decision.

Preparing the Final Draft

The final stage is the polishing and fine tuning. Edit out every unnecessary paragraph, sentence, word and thought. Check grammar, punctuation, sentence structure, verb tenses and those key ideas and thoughts.

Out of all the time spent writing a decision, at least one half of it is spent in the finishing stage; organizing, editing and fine tuning the ideas and the words used to express them.

Reviewing the Decision

If time permits, set the decision aside and review it in a couple of days. This will allow for the process of reflection and second thought to weave its way into the decision.

Conclusion

Providing reasons in your decisions ensures the party to the appeal understands how and why the board made its decision.

Writing good decisions with reasons will accomplish at least two things:

1) They explain how the board reached its decision. To do this the reasons should set out the facts, issues, law and reasoning which formed the basis of the decision reached.

2) They demonstrate to the parties that the board considered the evidence and arguments that were presented by them. This serves to avoid claims that the board failed to consider some relevant evidence or argument which should have been considered.

Writing a good decision will take practice and time. However, it is important to remember your audience when writing the decision. For the most part decisions are written for the loser to the appeal. They serve to provide information to or to persuade the loser why their arguments before the board were not valid.

The decisions made by the board of revision have serious implications and their significance cannot be underestimated. Long after the implications of the decisions have been realized, the reasons will live on in the decisions of future boards of revision.

References

MacAuley, Robert W., Q.C. and James L.H. Sprague. "Practice and Procedure before Administrative Tribunals." Toronto, Canada: Carswell Thomson Professional Publishing, 1996.

Williams, Joseph M. "Style: Toward Clarity and Grace." Chicago, Illinois: The University of Chicago Press, 1990.

Municipality of Somewhere
Board of Revision

Notice of Decision

Respondent: John E. Valuator, Saskatchewan Assessment Management Agency

In the matter of an appeal to the Municipality of Somewhere Board of Revision by:

Jack and Jill Ratepayer
P.O. Box 337
Somewhere, Saskatchewan
S0K 0A0

Respecting the Assessment of:

Lot 4, Block 58, Plan OLD2137
(1511 - 10th Street East)

BEFORE:

David J. Smith, Chairperson
Arnold Palminski, Member
Donald Smuthers, Member

Appeared for the Appellant:

Jack Ratepayer

Appeared for the Respondent:

John E. Valuator, Saskatchewan Assessment Management Agency
Tom R. Gueator, Assessor, Municipality of Somewhere

This appeal was heard in the Municipality of Somewhere Council Chambers, Somewhere, Saskatchewan on July 15, 2000.

This appeal is as a result of a Notice of Appeal filed with the Board, alleging an error exists in the valuation of the subject property.

FACTS

The subject site is 18.288 metres by 30.48 metres in size and has been assessed at a fair value of $3,500. It is improved with a single family type bungalow of 108.417 square metres and an attached garage of 31.494 square metres. The basement has three finished rooms. The improvement assessment is $20,000.

Both the land and improvement assessments were conducted according to the guidelines of the Provincial Assessment Manual. The valuator for the Saskatchewan Assessment Management Agency did not allow for any form of obsolescence for water problems when calculating the assessment.

At the time the home was built in 1963 there were no "elevations" available as to the height of the proposed finished street and sidewalk. When these services were put in place, the appellant had to install window wells, as his lot and house were not previously subject to flooding.

In the spring of 1999, the appellant received water in his basement resulting in the removal of the rugs and underlay. It is usually in the spring that the appellant has water up against his home's foundation. In the summer, there normally is not a problem with water. The appellant estimated there would have to be at least four to five inches of rain before there would be a problem.

ISSUES

1. Did the valuator err in appraising the subject land and improvements?
2. Should some form of obsolescence for water problems be permitted?
3. The appellant is requesting a thirty percent (30%) reduction in his assessments to compensate for water entering his basement.

THE LAW

The Urban Municipality Act, 1984

238(1) Land is to be assessed at its fair value exclusive of the value of any improvements.

(2) The dominant and controlling factor in the assessment of land is equity.

(3) The value at which land is assessed is to bear a fair and just proportion to the value at which other lands in the urban municipality are assessed.

(4) In determining the value of land, the assessor shall take into consideration and be guided by:

(a) the present use, location and zoning of the land and any other condition or circumstance affecting its value, other than interim development controls;

(b) any profitable use that may reasonably be made of the land; and

(c) any applicable formula, rule or principle set out in the assessment manual prepared for assessors by the agency and established as a manual by order of the agency.

(4.1) For the purposes of subsection (4), the assessor shall apply all the facts, conditions and circumstances required to be taken into account as if they had existed on the applicable base date.

(5) The value of land through which a pipeline runs is not to be reduced if the pipeline is buried in the land and the surface rights are not owned by the owner of the pipeline.

(6) Local improvement rates are not to be considered in the assessment of land.

(7) The value of a railway roadway owned or occupied by a railway company is to be assessed in accordance with the schedule of rates set by order of the agency.

(8) All land owned or occupied by a railway company, other than a railway roadway, is to be assessed at its fair value, but any railway superstructure on the land is not to be assessed.

(9) Land that is part of the station grounds or right of way of a railway company and is held by a person under a lease, licence or permit, together with all improvements on it, whether owned by that person or not and whether affixed to the land or not, is to be assessed to that person as if he owned the land and improvements and every such person shall pay all taxes on the assessed value of such land and improvements.

239 (1) Improvements are to be assessed apart from the land on which they are situated.

(2) The dominant and controlling factor in the assessment of improvements is equity.

(3) The value at which any improvement is assessed is to bear a fair and just proportion to the value at which other improvements in the urban municipality are assessed.

(4) In determining the value of any improvement, the assessor shall take into consideration and be guided by any applicable formula, rule or principle set out in the assessment manual prepared for assessors by the agency and established as a manual by order of the agency and any circumstances that may affect its value.

(4.1) For the purposes of subsection (4), the assessor shall apply all the facts, conditions and circumstances required to be taken into account as if they had existed on the applicable base date.

256 Notwithstanding that the value at which any specified land or improvement has been assessed appears to be more or less than its fair value, the amount of the assessment may not be varied on appeal if the value at which it is assessed bears a fair and just proportion to the value at which other lands or improvements in the urban municipality are assessed.

Document 1.7.1 - Saskatchewan Assessment Manual, Volume 1, Formulas, Rules and Principles, pp.1-5.

Depreciation shall be determined by calculating the amount of physical deterioration and functional obsolescence.

APPLICATION/ANALYSIS

The appellant has stated that he felt the value of his property had been significantly reduced as a result of being subject to flooding. He therefore requested a 30% reduction in the valuation of the subject improvement.

The respondent stated that when determining the valuation of the property, the water problems did not factor into any form of obsolescence that would result in a decrease in the valuation of the property.

The appellant did not substantiate the 30% loss in value to the improvement. In fact, the appellant stated that he had picked the 30% figure "out of the air." The Board is reluctant to concur with an arbitrarily chosen reduction. Moreover, the appellant has indicated this problem has occurred only once and in any normal year, the spring run-off does not present a problem for flooding on or in the subject property.

The respondent has stated that the valuation of the property was conducted in accordance with the Saskatchewan Assessment Manual.

CONCLUSION

The Board held that the appellant's request to reduce the valuation of the improvement by 30% was unfounded, and that the water/drainage problem would not cause such a value loss as alleged. The appeal is dismissed for the year 2000.

Dated at Somewhere, Saskatchewan this 25th day of July, 2000.

Municipality of Somewhere Board of Revision

Per:

_____
Chairperson

_____
Member

_____
Member